101ST CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPT. 101-244
Part 1

CENTRAL AMERICAN STUDIES AND TEMPORARY RELIEF ACT OF 1989

SEPTEMBER 19, 1989.—Ordered to be printed

Mr. BROOKS, from the Committee on the Judiciary, submitted the following

REPORT

together with

DISSENTING VIEWS

[To accompany H.R. 45 which on January 3, 1989, was referred jointly to the Committee on the Judiciary and the Committee on Rules]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 45) to provide for a General Accounting Office investigation and report on conditions of displaced Nicaraguans and Salvadorans, to provide certain rules of the House of Representatives and of the Senate with respect to review of the report, to provide for the temporary stay of detention and deportation of certain Nicaraguans and Salvadorans, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Central American Studies and Temporary Relief Act of 1989".

TITLE I—GENERAL ACCOUNTING OFFICE INVESTIGATION AND REPORT

SEC. 101. GAO INVESTIGATION.

(a) REQUIRING GAO INVESTIGATION ON DISPLACED NICARAGUANS AND SALVADORANS.—Within 60 days after the date of the enactment of this Act, the Comptroller General shall begin an investigation concerning displaced nationals of Nicaragua and El Salvador.

H523-12

(d) DETERMINATIONS ON DISPLACED NICARAGUANS AND SALVADORANS AND IN CENTRAL AMERICA.—The investigation shall determine the following, separately, with respect to displaced Nicaraguans and with respect to displaced Salvadorans who are present in either El Salvador, Nicaragua, Honduras, Guatemala, Costa Rica, Belize, or Mexico, regardless of whether or not they are registered with providers of humanitarian assistance:

(1) The number of these displaced persons and their current locations.

(2) Their place of origin in Nicaragua or El Salvador and the period of, and reason for, their displacement.

(3) Their current living conditions, with particular attention to (A) their personal safety and the personal safety of those providing assistance to them, and (B) the availability of food, housing, and medical assistance.

(4) An assessment of (A) current efforts to provide food, medical assistance, housing, and other necessities and to secure personal safety for these persons, and (B) policies and procedures that reasonably could be implemented to assure more efficient and equitable distribution of this assistance.

(5) The impact of the ongoing armed conflicts in Nicaragua and El Salvador, respectively, and of the reaction to such conflicts by relevant entities and individuals, including the officers of the government or political parties in Nicaragua or El Salvador, respectively, on the matters described in the previous paragraphs.

(6) The impact of the enactment of the Immigration Reform and Control Act of 1986 (Public law 99-603) on Nicaragua and El Salvador, including the number of Nicaraguans and Salvadorans returning to their respective countries, and the possible impact of such conduct on the capabilities of such countries to address adequately the returnees' employment, housing, and other needs.

(7) The impact of the 1986 earthquake in El Salvador on such country.

In making such investigation, the Comptroller General may use information available from United States Government sources, or information developed by private organizations recognized by the United States Government in the countries named herein (to the extent he determines that such information is reliable and useful). The Comptroller General shall use discretion in assigning personnel employed by the General Accounting Office to foreign countries in which their personal safety might be at risk.

(c) DETERMINATIONS ON NICARAGUANS AND SALVADORANS RETURNED FROM THE UNITED STATES.—In the case of nationals of Nicaragua and nationals of El Salvador who have been required (whether through deportation, voluntary departure proceeding, or otherwise) to depart from the United States and who return to Nicaragua or El Salvador, the investigation shall assess—

(1) their condition and circumstances in Nicaragua or El Salvador upon return frm the United States, with particular attention to any violations of fundamental human rights that have occurred upon their return to Nicaragua or El Salvador, and

(2) the extent to which these persons, upon their return, have become displaced persons within Nicaragua or El Salvador, the conditions of the camps in which such persons live, and the prospects for resettlement of such persons.

(d) DETERMINATIONS ON NICARAGUANS AND SALVADORANS IN THE UNITED STATES IN AN UNLAWFUL STATUS.—In the case of nationals of Nicaragua and nationals of El Salvador, respectively, who are present in the United States in an unlawful status, the investigation shall—

(1) compare the situation in Nicaragua and El Salvador with the situation in other countries during periods when nationals of those countries have been provided administrative grants of extended voluntary departure under the immigration laws:

(2) describe the policies and procedures of the United States respecting the treatment of aliens (other than Nicaraguans and Salvadorans) in the United States in similar circumstances;

(3) describe the policies of all other countries in which Nicaraguans or Salvadorans have sought refuge as these policies concern the return of Nicaraguans to Nicaragua and Salvadorans to El Salvador; and

(4) assess their conditions and circumstances in the United States, with particular attention to the impact of unlawful status upon their treatment.

SEC. 102. REPORT.

The Comptroller General shall submit to the Speaker of the House of Representatives and the President of the Senate, not later than 2 years after the date of the

initiation of the study under section 101, a report on such study, including detailed findings concerning the items described in subsections (b), (c), and (d) of such section.

TITLE II—CONGRESSIONAL REVIEW

SEC. 201. REFERRAL OF REPORT, COMMITTEE HEARINGS, AND COMMITTEE REPORT.

(a) REFERRAL.—The report, when submitted under section 102, shall be referred, in accordance with the rules of the respective House of Congress, to the standing committee or committees having jurisdiction over the subjects of the report, and the report shall be printed as a document of the House of Representatives.

(b) COMMITTEE HEARINGS.—No later than 90 days of continuous session of Congress after the date of the referral of the report to a committee, in accordance with the rules of the respective House, the committee shall initiate hearings, insofar as such committee has legislative or oversight jurisdiction, to consider—

(1) the findings of the report;

(2) the appropriate steps that should be taken to provide assurances of personal safety and adequate, efficient, and equitable distribution of assistance with respect to Nicaraguans and Salvadorans who are displaced within their countries or who have fled to other countries in Central America;

(3) treaty obligations of the United States, humanitarian considerations, and previous practice of the United States respecting the treatment of aliens in similar circumstances; and

(4) whether it is appropriate to extend, remove, or alter the restrictions contained in title III.

(c) COMMITTEE REPORT.—No later than 270 days of continuous session of the Congress after the date of the referral of the report to a committee, in accordance with the rules of the respective House, the committee shall report to its respective House its oversight findings and any legislation it deems appropriate.

(d) TREATMENT OF CONTINUITY OF SESSION.—For purposes of this Act, continuity of session of Congress is broken only by an adjournment sine die at the end of the second regular session of a Congress, and days on which either House of Congress is not in session because of an adjournment of more than 10 days to a date certain are excluded from the computation of the periods of continuous session of Congress.

TITLE III—TEMPORARY PROTECTED STATUS

SEC. 301. CONFERRAL OF TEMPORARY PROTECTED STATUS ON CERTAIN NATIONALS OF EL SALVADOR AND NICARAGUA.

(a) IN GENERAL.—In the case of an alien who is a national of El Salvador or Nicaragua and who meets the requirements of subsection (b), the Attorney General, in accordance with this section—

(1) shall confer upon the alien temporary protected status in the United States and shall not deport the alien from the United States during such period, except that such protected status shall not extend beyond the 3-year period after the date of the enactment of this Act; and

(2) shall authorize the alien to engage in employment in the United States and provide the alien with an "employment authorized" endorsement or other appropriate work permit.

(b) ALIENS ELIGIBLE FOR TEMPORARY PROTECTED STATUS.—(1) Subject to paragraph (3), an alien who is a national of El Salvador or Nicaragua meets the requirements of this paragraph only if—

(A) the alien has been continuously physically present in the United States since the date of the enactment of this Act;

(B) the alien has continuously resided in the United States during the period beginning before March 1, 1989, and ending on the date of the enactment of this Act;

(C) the alien is admissible as an immigrant, except as otherwise provided under paragraph (2)(A), and is not ineligible for temporary protected status under paragraph (2)(B); and

(D) the alien registers under this section within the 180-day registration period established by the Attorney General not more than 60 days after the date of the enactment of this Act.

The Attorney General may require payment of a reasonable fee as a condition of registering an alien under subparagraph (D) or otherwise providing an alien with an "employment authorized" endorsement or other appropriate work permit under this section. The amount of such fee shall not exceed $50.

(2)(A) In the determination of an alien's admissibility as an immigrant for purposes of paragraph (1)(C)—

(i) the provisions of paragraphs (14), (20), (21), (25), and (32) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) shall not apply;

(ii) except as provided in clause (iii), the Attorney General may waive any other provision of such section in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest; but

(iii) the Attorney General may not waive, of such section—

(I) paragraphs (9) and (10) (relating to criminals);

(II) paragraph (23) (relating to drug offenses), except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marijuana;

(III) paragraphs (27), (28), and (29) (relating to national security and members of certain organizations); or

(IV) paragraph (33) (relating to those who assisted in the Nazi persecution).

(B) An alien shall not be eligible for temporary protected status under this section if the Attorney General finds that—

(i) the alien has been convicted of a felony or three or more misdemeanors in the United States; or

(ii) the alien is described in section 243(h)(2) of the Immigration and Nationality Act (8 U.S.C. 1253(h)(2)).

(3) The Attorney General shall withdraw any benefits provided to an alien under this section if—

(A) the Attorney General finds that the alien was not in fact eligible for such benefits under this section,

(B) except as provided in paragraph (4) and subsection (d)(3), the alien has not remained continuously physically present in the United States from the date the alien first was provided temporary protected status under this section, or

(C) the alien fails, without good cause, to register with the Attorney General annually, at the end of each 12-month period after the conferral of such status, in a form and manner specified by the Attorney General.

(4) For purposes of paragraph (1)(A), an alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences from the United States, without regard as to whether such absences were authorized by the Attorney General.

(5) Nothing in this section shall be construed as authorizing an alien to apply for admission to, or to be admitted to, the United States in order to apply for temporary protected status under this section.

(6) Information obtained in carrying out this subsection shall be protected in accordance with section 245A(c)(5) of the Immigration and Nationality Act (8 U.S.C. 1255a(c)(5)).

(c) DOCUMENTATION.—Upon the conferral of status upon an alien under this section, the Attorney General shall provide for the issuance of such temporary documentation and authorization as may be necessary to carry out the purposes of this section.

(d) DETENTION OF THE ALIEN.—Nothing in this section shall be construed to authorize the detention of any alien who is eligible for temporary protected status under this section. An alien provided the benefits under this section shall not be detained by the Attorney General on the basis of the alien's immigration status in the United States.

SEC. 302. PERIOD OF TEMPORARY PROTECTED STATUS NOT COUNTED TOWARD OBTAINING SUSPENSION OF DEPORTATION BENEFIT.

With respect to an alien upon whom temporary protected status is conferred under section 301, the period of such status shall not be counted as a period of physical presence in the United States for purposes of section 244(a) of the Immigration and Nationality Act (8 U.S.C. 1254(a)), unless the Attorney General determines that extreme hardship exists. However, such period shall not cause a break in the continuity of residence of the period before and after such period for purpose of such section.

SEC. 303. ALIEN'S BENEFITS AND STATUS DURING PERIOD OF TEMPORARY PROTECTED STATUS.

(a) IN GENERAL.—During a period in which an alien is granted temporary protected status under this title, the alien—

(1) shall not be considered to be permanently residing in the United States under color of law;

(2) shall not be eligible for any program of public assistance (furnished directly or through reimbursement) under Federal law, except for treatment for an emergency medical condition as described in section 1903(v) of the Social Security Act;

(3) may be deemed ineligible for public assistance by a State (as defined in section 101(a)(36) of the Immigration and Nationality Act) or any political subdivision thereof which furnishes such assistance; and

(4) may travel abroad temporarily with the prior consent of the Attorney General.

(b) INELIGIBILITY.—An alien who was admitted to the United States as a nonimmigrant is not eligible for temporary protected status under this title until the alien's period of authorized stay as such a nonimmigrant has expired. Any such alien shall register within 90 days after the date of such expiration or, if later, before the expiration of the registration period under section 301(b)(1)(C).

(c) DURATION OF WORK AUTHORIZATION.—Work authorization granted under section 301(a)(2) shall be effective throughout the period the alien is in temporary protected status under this title.

(d) NOTIFICATION OF RIGHTS.—Upon the granting of protected status under this title, the Attorney General shall notify the alien of the alien's rights and responsibilities under this title. Such notification shall be provided in a form and language that the alien can understand.

PURPOSE OF BILL

The purpose of H.R. 45, as amended, is to prevent the forced departure of aliens to the war-torn nations of El Salvador and Nicaragua by allowing Salvadorans and Nicaraguans in the United States to remain in the United States under "Temporary Protected Status" for three years.

HISTORY OF LEGISLATION

98th Congress

As part of its oversight jurisdiction, the Subcommittee on Immigration, Refugees, and International Law monitored closely the situation in El Salvador and the problem of displaced Salvadorans in this country and throughout Central America. A provision stating a Sense of Congress that voluntary departure status be extended to nationals of El Salvador was included in H.R. 1510, the Immigration Reform and Control Act.

In addition, H.R. 4447, a bill to temporarily suspend the deportation of Salvadorans to El Salvador pending a study of conditions in that country was introduced and referred to the Subcommittee for consideration. The Subcommittee held hearings on H.R. 4447 on April 12, 1984 and received testimony from the Administration, concerned Members of Congress, and interested organizations. On October 3, the Subcommittee marked up H.R. 4447 and ordered the bill, as amended, favorably reported to the Full Committee by a vote of 5 to 3. Due to the lateness of the Session, no action was taken on the bill by the Full Committee prior to the adjournment of the 98th Congress.

99th Congress

The bill was reintroduced in the 99th Congress as H.R. 822, and the Subcommittee on Immigration, Refugees and International Law held a hearing on the bill on November 7, 1985. On April 16, 1986, the Subcommittee adopted a single amendment in the nature of a substitute to H.R. 822 and reported the bill, as amended, to the Full Committee without recommendation by a vote of 5 to 5. The

Full Committee on the Judiciary, on July 30, 1986, considered the bill, as amended, and by a record vote of 19 to 16 ordered H.R. 822, as amended, favorably reported to the House.

On October 8, 1986, H.R. 822, now modified to include not only Salvadorans but also Nicaraguans, was incorporated into the Immigration Control and Legalization Amendments Act (H.R. 3810) as original text by the Committee on Rules. During Floor consideration of the Act, an amendment to delete the Salvadoran and Nicaraguan provision was defeated by record vote of 197–199. Following House passage of H.R. 3810 on October 9, and the substitution of the text of H.R. 3810 for a Senate companion measure, S. 1200, a Conference Committee on S. 1200 was convened. The House Conference Report, filed on October 14, did not include any statutory provision for the relief of Salvadorans and Nicaraguans.

100th Congress

H.R. 618, a bill virtually identical to the measure incorporated into H.R. 3810 in the 99th Congress, was introduced by the Honorable Joe Moakley on January 20, 1987, and jointly referred to the Committee on the Judiciary and the Committee on Rules.

On May 20, 1987, the Subcommittee on Immigration, Refugees, and International Law held a hearing on the measure. Witnesses included officials of the Departments of Justice and state and the General Accounting Office. Markup occurred on June 16, at which time the Subcommittee, by virtue of a 5–5 vote, reported the bill to the Full Committee without recommendation.

On June 30, the full Committee marked up the measure and by a record vote of 20 to 15 ordered it favorably reported to the House (H. Rept. No. 100–212, Part I). The bill was reported by the Rules Committee on July 22 (Part II).

On July 28, 1987, the bill was brought to the House Floor. The accompanying Rule (H. Res. 230) treated as original text an amendment in the nature of a substitute similar to H.R. 618 as reported by the Judiciary Committee but containing some minor differences.

By a record vote of 237 to 181, the substitute was adopted.

101st Congress

The bill H.R. 45 was introduced by Mr. Moakley on January 3, 1989 and jointly referred to the Judiciary and Rules Committees. The Subcommittee on immigration, Refugees and International law marked up the bill on May 24, 1989, and adopted an amendment, offered by Chairman Morrison, by voice vote. The bill, with the Morrison amendment reported as an amendment in the nature of a substitute, was reported to the full Committee without recommendation by a record vote of 5 to 5.

COMMITTEE VOTE

H.R. 45 was considered by the full Judiciary Committee on July 28, 1989, and was ordered favorably reported, with an amendment in the nature of a substitute, by a recorded vote of 20–14.

NEED FOR LEGISLATION

I. Background

The Immigration and Nationality Act (INA) provides that all aliens (i.e., any person not a citizen or national of the United States) must enter pursuant to the INA and be documented by INS. The two major categories of aliens are immigrants, who are admitted for permanent residence, and nonimmigrants, who are granted temporary visas (e.g., for tourism or business trips). Aliens who lack proper documentation are generally of two kinds: those who entered the United States without inspection according to immigration procedures; or those who entered the United States on a temporary visa and have stayed beyond the expiration date of the visa. Undocumented aliens of both kinds are subject to deportation.

As a signatory to the United Nations Convention and Protocol Relating to the Status of Refugees, the United States agrees to the principle of nonrefoulement, which means that it will not return an alien to a country where his life or freedom would be threatened because of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. Nonrefoulement is embodied in U.S. immigration law, notably in the provisions allowing individual aliens to apply for asylum in the United States (Section 208 of INA; 8 U.S.C. 1158), and requiring the Attorney General to withhold the deportation of aliens to a country in which the alien's life or freedom would be threatened because of persecution (Section 243(h) of INA; 8 U.S.C. 1253(h)), as well as in the definition of "refugee" (Section 101(a) of INA; 8 U.S.C. 1101(a)(42)).

A refugee is a person who is unwilling or unable to return to his country of nationality or habitual residence because of a well-founded fear of persecution on account of race, religion, nationality, membership in a particular group, or political opinion. The current procedures and guidelines for admitting refugees and for protecting aliens already within the country (i.e., asylum or withholding deportation) were enacted as part of the Refugee Act of 1980. To benefit from these protections, an alien must prove to an INS District Director or to an immigration judge during immigration proceedings, that he or she would be persecuted upon return to a given country. In judging the merits of the asylum claim, the immigration authorities rely on an advisory opinion from the State Department based upon an analysis of conditions in the country in question.

INS has provided, under certain conditions, discretionary relief from deportation so that aliens who have not been legally admitted to the U.S. may remain in this country. The statutory authority cited by the agency for these discretionary procedures is generally that portion of immigration law that confers on the Attorney General the authority for general enforcement (8 U.S.C. 1103) and the section of the law covering the authority for voluntary departure (Section 242(b); 8 U.S.C. 1252). Currently, three such discretionary procedures are used by INS to provide relief from deportation. One of the procedures—stay of deportation—is defined under INS regulations; another—deferred departure or deferred action—is described in INS operating instructions; and the third—extended vol-

untary departure (EVD)—has not been formally defined and appears to be evolving. EVD is the only form of relief characterized by INS as specifically and solely for blanket relief for all members of a national group. The discretionary procedures are generally developed and used to provide relief the Administration feels is appropriate but which would not be explicitly available under the statute. Blanket relief from deportation for a national group is not provided under statute.

INS granted EVD status to Poles who entered this country prior to July 21, 1984; Ethiopians who arrived here before June 30, 1980; and Afghans currently in the United States. INS, in consultation with the State Department, has given EVD status to Nicaraguans (July 3, 1979 to Sept. 28, 1980), Iranians (Apr. 16, 1979 to Dec. 13, 1979), and Ugandans (June 8, 1978 to Sept. 30, 1986). Lebanese have been handled sympathetically as a group on a case-by-case basis since 1976. Countries whose nationals have benefited in the past from a status similar to EVD include: Cambodia, Cuba, Chile, Czechoslovakia, Dominican Republic, Hungary, Laos, Rumania, and Vietnam. On June 6, 1989, the Administration granted the equivalent of EVD to nations of The People's Republic of China.

The U.S. Government's position is that all EVD decisions require a balance of judgment regarding foreign policy, humanitarian, and immigration concerns (statement of Hon. Elliott Abrams, before Judiciary Subcommittee on Immigration, Refugees and International Law, Apr. 12, 1984). During William French Smith's tenure as Attorney General, he stated, "It is inaccurate, however, to assure that there exists any specific criterion or criteria, such as the occurrence of violence or political instability, by which grants of extended voluntary departure are determined" (letter from Hon. William French Smith to U.S. House of Representatives, July 19, 1983). The Bush Administration's position is that the granting of EVD is a suspension of enforcement of the immigration laws against a particular group of individuals and, thus, is an exercise of the discretion of the Attorney General.

In keeping with the traditional humanitarian response in cases of this nature, this legislation would mandate temporary relief from deportation for nationals of El Salvador and Nicaragua. The Committee strongly believes that the circumstances and conditions in El Salvador and Nicaragua are as compelling as those in other countries whose nationals have previously received discretionary relief. The Committee also expresses its disappointment that the Executive Branch failed to provide temporary discretionary relief to those people, despite the equities involved, so that legislation has become necessary.

II. El Salvador

El Salvador has been plagued by civil war, random violence, and politically motivated murder since 1979. Since that time approximately 65,000 persons have been killed, hundreds of thousands have been internally displaced, and probably more than one million have fled to neighboring countries, including the United States.

The Committee is convinced that the "Country Reports on Human Rights Practices For 1988," published by the U.S. Depart-

ment of State, provides compelling evidence that conditions in El Salvador are so dangerous that the forcible return of Salvadoran nationals to that country is inconsistent with traditional U.S. values concerning human life and human rights. The following are excerpts from that report:

> El Salvador's efforts to institute democracy, enforce respect for human rights, and redress social injustice are complicated and severely tested by the existence of a Marxist-Leninist guerrilla insurgency supported by Nicaragua, Cuba, and the Soviet Union. The five organizations, including the armed wing of the PCES, that form the Farabundo Marti Front for National Liberation (FMLN) have been engaged in armed conflict against the Government since 1980 and are dedicated to the violent overthrow of the democratic process. In recent years the FMLN, with an estimated 6,000 to 8,000 full-time guerrillas backed by a network of front groups consisting of part-time militia, clandestine cells, and paramilitary civilian supporters, has stepped up its program of urban bombings and assassinations of unprotected government officials. The FMLN has embarked on a campaign of threatening and assassinating mayors. Since March 1988, 8 mayors and 1 former mayor were killed by the FMLN and over 70 were threatened with death. The FMLN also increasingly relied on children for combat and support tasks in 1988. Finally, the insurgents continued to seek to destroy the economy by attacking infrastructure and production facilities.
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> Commencing in mid-1987, there was an increase of killings (press reports show a rise from an average of 11 per month in mid-1987 to an average of 20 per month for the first 10 months of 1988) in which a political motive was possible, though unproven. Some of these killings might have been carried out by rightwing vigilantes, the security forces, or the FMLN; others may have been committed by common criminals.
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> The FMLN follows a strategy of seeking to disrupt the operations of the economy: it holds traffic bans, which disrupt normal commercial activity; it extorts "war taxes" to raise income; and it has increasingly resorted to sabotage of economic targets. The group's stated goal is to worsen economic conditions in order to turn the workers against the democratic system. Droughts, floods, and the 1986 earthquake also damaged the economy in recent years.
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> The judicial process continues to be hindered by archaic procedures, inadequate infrastructure, intimidation by leftist and rightist extremists, and corruption. There was little progress in several noteworthy human rights cases during 1988. There were credible allegations that the military was

uncooperative in, and in some cases hindered, investigations of reported military abuses of human rights.

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Reports continue of noncombat killings attributed to the military and police. The mutilated bodies of two men and a boy were discovered on February 1, at Puerta del Diablo, a place that had once been a dumping ground for assissination victims. The killings were traced to soldiers of the army's First Brigade; the investigation has been stalled due to a lack of cooperation by the military. On May 24 the bodies of two men, who family members said had been detained by elements of the Army's Arce Battalion on February 25, were disinterred in El Tablon, Morazan department. The bodies showed signs that the men had been tortured before they were murdered. A third man taken at the same time remains missing. The Army reported that the unit involved claimed the victims were killed in combat. On the basis of this report, the military halted further investigation, thus hindering the civilian investigation.

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Of the killings attributed to the FMLN, many victims were rural residents who refused to collaborate with the guerrillas or were suspected of being government informers. On October 15, individuals claiming to be soldiers from the First Brigade summarily executed four men. Tutela Legal's subsequent investigation reported that the murders were committed by FMLN guerrillas who apparently believed that their victims were government informants. Labor groups, church leaders, and political figures have condemned the FMLN for the December 6 assassination of Ismael Diaz, an official of a democratic peasant association. Other victims of guerrilla actions were passengers of vehicles machine-gunned during one of the five "traffic bans" declared by the FMLN in 1988. There are also credible reports of civilians being taken from buses and killed by guerrillas and of persons who were kidnaped by guerrillas and have never reappeared.

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The FMLN has embarked on an assassination campaign aimed at eliminating democratically elected mayors. Eight mayors and one former mayor have been assassinated by the FMLN since March. More than 70 other mayors have been threatened with death during 1988 by the FMLN for cooperating with the Government.

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Despite FMLN claims to respect the physical and psychological integrity of its captives, they nevertheless occasionally kill them. The guerrillas reportedly perform kill-

ings in front of other kidnap victims as a form of intimidation to persuade the captives to be cooperative.

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The guerrillas' use of unmarked, indiscriminately placed landmines and booby traps is a major cause of death and maiming. Planted along farm roads and other economic and infrastructure targets these mines killed 36 civilians in 1987, and 42 in the first 10 months of 1988.

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No military officer has been convicted of human rights violations or any other crime in recent years. The attempt to reopen the trial against one of the former military officers who ordered the January 1981 murders of a Salvadoran and two American land reform experts failed on March 9 when the Supreme Court rejected an appeal by the prosecution to overturn a December 10, 1987 lower court ruling that the Government's amnesty applied to the case. (The amnesty was decreed in accordance with the Government's international obligations under the October 1987 Esquipulas agreement.) The Supreme Court on July 21 also upheld a controversial lower court decision to grant amnesty to the defendants, including several active duty officers, in the notorious Las Hojas massacre case.

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The guerrillas arbitrarily interfere widely in the lives of the inhabitants of the conflictive zones. They extract "war taxes" (consumable such as food, clothing, and medical supplies), intercept mail, and engage regularly in wiretapping. The guerrillas often force villagers to attend political meetings, and they engage in forced recruitment of combatants, laborers, and porters. FMLN committees control the villages set up by refugees who returned from camps in Honduras, just as they controlled the camps. The people usually comply with the FMLN demands, because the guerrillas regularly back up their threats by assassinating those who fail to cooperate.

Despite these conditions, the asylum approval rate for Salvadorans in the United States has averaged less then five percent. The Committee attributes this to inequities in the asylum process as well as to the inherent limitations of the refugee definition. In any event, the Committee believes that the approximately 500,000 undocumented Salvadorans in the United States should be allowed to remain here until such time as the conditions in El Salvador are substantially improved.

Nicaragua

Estimates of the number of Nicaraguans who have fled Nicaragua during that nation's civil war range as high as 650,000, the equivalent of fifteen percent of the population. It is entirely possible that both Honduras and Costa Rica have larger undocumented Nicaraguan populations than does the United States.

According to Deputy Assistant Secretary of State Richard Holwill, who testified before the Immigration Subcommittee on May 20, 1987, those fleeing Nicaragua are leaving a deteriorating situation. The Sandinistas are increasing repression through censorship, restrictions on political activities, harassment of the Church, and suspension of fundamental civil liberties. It is now illegal to leave Nicaragua without permission, and those who sought haven abroad are considered suspect upon their return.

Similarly, the "Country Reports on Human Rights Practices for 1988" states, in pertinent part as follows:

> Disappearances generally involve persons detained by the EPS or by state security forces. EPS military recruitment practices include the roundup of young males at schools, movie theaters, and public events. Military recruiters periodically halt vehicles and remove draft-age men. Those detained usually are not provided an opportunity to notify their families of their detention. Some who resist Sandinista pressure to join the military have disappeared. Persons who are accused of having provided support to the Resistance (e.g., giving food to Resistance forces as they move through an area) also have disappeared after EPS or security forces have detained them for questioning.
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> During interrogation, detainees have been subjected to various forms of physical and psychological torture, including food and water deprivation, mock executions, and being beaten while their hands are manacled behind their backs or while they are hung by their hands. The Independent Permanent Commission on Human Rights reports that physical torture is more commonly used against peasants, while psychological methods are utilized against members of civic, political, or labor organizations. Death threats against prisoners and their family members are also common.
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> Arrests or detention of persons suspected of being Resistance supporters are common, particularly in rural areas. Although the Constitution provides that a detainee must be brought before a competent legal authority within 72 hours of arrest, suspects are often held for months without charges or access to counsel. Short-term arrest and interrogation is an integral part of the Government's harassment of the civilian opposition. Persons suspected of counterrevolutionary activity are generally picked up at night by the DGSE. Detainees are normally held until they agree to confess their guilt or implicate others in counterrevolutionary activities.
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> The Government monitors the telephones of political, labor union, and other leaders; it examines correspondence mailed both within the country and from abroad. A wide network of DGSE informants monitors the activities of persons suspected of anti-Sandinista attitudes.

There have also been reports of targeted executions, such as this report by The Los Angeles Times (April 16, 1989):

> [T]hroughout a year-old ceasefire that has all but halted traditional combat, Sandinista forces and U.S.-backed contras have waged a quiet battle of targeted executions on a scale at least as large as it was at the height of the seven-year conflict * * * witness descriptions of the tactics on both sides of this struggle are chillingly similar. Contras and Sandinistas pose in uniforms of the enemy to seek informers, who are fingered by deserters from each side. Victims are beaten on long marches through the hills, often without shoes, to die with their throats slashed.

ANALYSIS OF H.R. 45, AS AMENDED

Section 101.—Requires the General Accounting Office (GAO) to conduct an investigation, beginning within 60 days of enactment, concerning the following with regard to displaced Salvadorans and Nicaraguans in Central America: (1) their number and location; (2) their place of origin and the length of, and reason for, their displacement; (3) their living conditions and safety; (4) ways in which their health and personal safety may be made more secure; (5) the impact of the wars in those countries and the activities of government officials and political parties on the matters described in (1) through (4); (6) the impact of the 1986 earthquake in El Salvador; and (7) the ability of El Salvador and Nicaragua to absorb returnees. Also requires GAO to study—(1) the condition and number of Salvadorans and Nicaraguans returned to those countries from the U.S.; (2) the situation in those countries compared to countries whose nationals have been granted Extended Voluntary Departure; and (3) the treatment and condition of Salvadorans and Nicaraguans illegally in the United States.

Section 102.—Requires GAO to submit a report to Congress not later than two years after beginning the study, detailing the findings of the study.

Section 201.—Requires the appropriate committees of each House of Congress to hold hearings on the report within 90 days of receiving referral of the report. Delineates certain issues that must be considered by the committees during such hearings. Within 270 days of continuous session of Congress of receiving referral of the report such Committees must report findings and legislation they deem appropriate. Defines continuous session.

Section 301.—Grants Salvadorans and Nicaraguans "temporary protected status" in the United States for three years from the date of enactment. Establishes a cutoff date—March 1, 1989—by which aliens covered will have had to have been in the United States in order to receive protection. Requires registration within a 180-day registration period. Gives the Attorney General a period of time (60 days) from the date of enactment to set up the program. Also requires re-registration annually. Requires issuance of work authorizations. Specifies grounds for exclusion similar to those in the legalization program. Limits any registration fee to $50 per person. Allows the Attorney General to rescind benefits for failure

to register and for other reasons. Requires that beneficiaries remain "continuously physically present" in the United States from the date on which they were provided protection, but allows brief casual and innocent absences from the United States. Specifies that nothing in this section shall be construed as authorizing an alien to apply for admission to the United States in order to apply for temporary protected status. Provides that applications for Temporary Protected Status shall remain confidential. Prohibits the Attorney General from detaining any alien eligible for temporary protected status.

Section 302.—Provides that periods spent in temporary protected status shall not cause a break in the continuity of residence for purposes of suspension of deportation. Clarifies that aliens granted "temporary protected status" can travel abroad with the prior consent of the Attorney General. Specifies that a nonimmigrant may not qualify for temporary protected status until such individual's period of authorized stay as a nonimmigrant has expired. Disqualifies beneficiaries from programs of public assistance.

OVERSIGHT STATEMENT

Clause 2(l)(3)(A) or rule XI of the Rules of the House of Representatives is inapplicable since no oversight findings and recommendations have been received from the Committee on Government Operations.

INFLATIONARY IMPACT STATEMENT

Pursuant to Clause 2(l)(4) of rule XI of the Rules of the House of Representatives the Committee estimates that this bill will not have a significant inflationary effect on prices and costs in the operation of the national economy.

ESTIMATE OF COST

Pursuant to Clause 7 of rule XIII of the Rules of the House of Representatives, the Committee states that it generally concurs with the cost estimate submitted by the Congressional Budget Office as set forth below.

BUDGETARY INFORMATION

Clause 2(l)(3)(B) or rule XI of the Rules of the House of Representatives is inapplicable because the instant legislation does not provide new budget authority Pursuant to Clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the following estimate was prepared by the Congressional Budget Office and submitted to the Committee:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 8, 1989.

Hon. JACK BROOKS,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 45, the Central American Studies and Temporary

Relief Act of 1989, as ordered reported by the House Committee on the Judiciary, July 28, 1989.

H.R. 45 would require the General Accounting Office (GAO) to investigate and report on the conditions of displaced Salvadorans and Nicaraguans. The GAO investigation would begin within 60 days of enactment, and the report would be due no later than two years after the study begins.

The bill would also provide for the temporary stay of detention and deportation of certain Salvadorans and Nicaraguans for a period of three years. H.R. 45 would require all Salvadorans and Nicaraguans to whom the bill would apply to register initially and on an annual basis with the Immigration and Naturalization Service (INS) in order to be eligible for the temporary protected status. The bill would also allow the Attorney General to require payment of up to $50 as a condition of registering an alien to defray the costs of such registration. In general, the nationals would be ineligible for federal public assistance but would receive state and local public assistance.

Based on information provided by the GAO, CBO estimates that the investigation and report would cost between $500,000 and $750,000, largely in fiscal years 1990 and 1991, but is not likely to affect total agency spending. Even though most Salvadoran and Nicaraguan nationals could not be detained or deported during the specified period, should this legislation be enacted there would be little or no cost savings because there is a backlog of other categories of aliens to be detained or deported. Costs to the federal government to register certain Salvadorans and Nicaraguans initially and on an annual basis would likely be offset by the collection of a registration fee.

By prohibiting the detention and deportation of certain unauthorized aliens currently living in the United States, this bill would result in additional costs to state and local governments for public assistance programs. CBO estimates that increased costs to states and localities for public assistance would be between $35 million and $70 million for fiscal year 1990 and between $75 million and $150 million a year in 1991 and 1992. These costs would be for state and local general assistance programs that provide both cash payments and medical coverage to low-income families and individuals.

CBO's estimate assumes that there are currently between 500,000 and 1 million Salvadoran and Nicaraguan nationals to whom this bill would apply. We estimate that 60 percent would register with the INS and therefore be granted a stay of detention and deportation for a period of three years, as specified in the bill.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mitchell Rosenfeld, who can be reached at 226-2860.

Sincerely,

ROBERT D. REISCHAUER, *Director*

COMMITTEE RECOMMENDATION

After careful consideration of this legislation, the Committee is of the opinion that this bill should be enacted and accordingly recommends that H.R. 45, as amended, do pass.

CHANGES IN EXISTING LAW

Pursuant to Clause 3 of rule XIII of the Rules of the House of Representatives, no changes are made to existing law by this bill.

ADMINISTRATION POSITION

The Administration opposes the enactment of this bill.

DISSENTING VIEWS OF REPRESENTATIVES LAMAR SMITH, HAMILTON FISH, JR., CARLOS J. MOORHEAD, HENRY J. HYDE, F. JAMES SENSENBRENNER, JR., BILL McCOLLUM, GEORGE W. GEKAS, WILLIAM E. DANNEMEYER, HOWARD COBLE, D. FRENCH SLAUGHTER, JR., LARKIN I. SMITH, CHUCK DOUGLAS, AND CRAIG T. JAMES

We oppose H.R. 45, legislation which will stay the deportation of Salvadorans and Nicaraguans, and requires that GAO commence a study of displaced Nicaraguans and Salvadorans within 60 days of enactment.

When we discuss suspension of deportation, what we are really discussing is whether people who emigrate to the United States illegally, and who do not meet the refugee standard established under our own laws, should be allowed to stay here anyway, under a specially crafted exception.

Extended Voluntary Departure (EVD) is a temporary status exercised at the discretion of the Attorney General, which has never before been granted by statute, and has only once—regarding Poland in 1981—been granted administratively by the Attorney General since Congress adopted the Refugee Act of 1980.

THE LEGISLATION UNDERMINES THE IMMIGRATION REFORM AND CONTROL ACT OF 1986

This legislation undermines the Immigration Reform and Control Act of 1986. Under this law, in order to obtain amnesty, illegal aliens had to prove that they had continuously resided in the United States since before 1982. A grant of EVD would extend special privileges to Salvadorans and Nicaraguans, regardless of when they come or why. The 1986 Act granted a one-time amnesty program that passed the House by only 5 votes. To allow Salvadorans and Nicaraguans to remain here violates this one-time amnesty legalization program and undermines the purpose of IRCA, which was to deter future illegal migration to the United States.

In addition, we have not yet seen the full impact of the employer sanctions provisions, nor the legalization provisions. To grant a stay of deportation to foreign nationals of these two countries at this time not only undermines the purposes of IRCA, but is unfair to other countries that face hardship as a result of its passage. If this bill passes, we can expect to hear from other countries who want special, similar treatment upon passage of this new legislation.

Such legislation sets a bad precedent. It encourages individuals from other countries with economic problems to come to the U.S. As generous as our nation is, we cannot accept all who desire to come here to better their economic situation.

REVERSING THE INTENT OF THE REFUGEE ACT

Congress passed the Refugee Act of 1980 to supplant the piecemeal and nation-specific legislation for refugees. It set up a system under which any person, regardless of origin can apply for admission to the U.S. based on fear of persecution. H.R. 45 circumvents law by creating a special system for handling Salvadorans and Nicaraguans in the next two years, while waiting for the GAO Report. As my colleagues know, thousands of Salvadorans and Nicaraguans have also applied for asylum on our southern border. Each claim has been reviewed on a case-by-case basis and granted or rejected based on our current refugee law. This bill would create a blanket grant by accepting all Salvadorans and Nicaraguans who are currently in the U.S. regardless of the reason for their presence here.

THE U.S. IS NOT THE LAST SAFE HAVEN

Critics claim that there is no other place for these individuals to go and the U.S. must give them refuge. But this is incorrect. There are places closer to El Salvador that will provide refuge for these people. Not all parts of El Salvador are unsafe, and Honduras provides refugee camps open to all Salvadorans seeking haven. In addition, almost all Salvadorans have come to the U.S. by land routes. In doing so, they must cross at least two borders, Mexico and Guatemala. Mexico is also a safe haven for Salvadorans and the United Nations High Commission for Refugees has established a presence in both Mexico and Honduras.

If threats of political persecution were the only reason for coming to the United States, then why do Salvadorans and Nicaraguans not go to safe countries closer to their own?

Some advocates of EVD status argue that "general conditions" in El Salvador put every Salvadoran in physical danger. The distinction between "targeting" of deportees, as opposed to "general conditions" for people in El Salvador and Nicaragua, is important. The "general conditions" argument would allow literally every citizen of El Salvador and Nicaragua to move to the United States.

After reviewing the case in support of granting EVD for Salvadorans and Nicaraguans, one can only ask why other countries experiencing political strife around the world should not be equally qualified for EVD status.

Passage of this bill would send an unjustified message to Salvadorans and Nicaraguans as well as to others who seek refuge in the U.S. It violates the Immigration Act of 1986 and the Refugee Act of 1980. And, it sends a strong signal that the U.S. is no longer applying a strict definition of political asylum but rather acts on an ad hoc basis in granting stays of deportation. This legislation should be opposed.

LAMAR SMITH.
HAMILTON FISH, Jr.
C. J. MOORHEAD.
HENRY J. HYDE.
F. JAMES SENSENBRENNER, Jr.
BILL MCCOLLUM.

GEORGE W. GEKAS.
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